

Montana Water Court
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MONTANA WATER COURT, UPPER MISSOURI DIVISION
MISSOURI RIVER FROM SUN RIVER TO MARIAS RIVER - BASIN 41Q

* * * * *

CLAIMANT: Joseph C. Bodner

CASE 41Q-0106-I-2023

41Q 30108595

41Q 30108596

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. Joseph C. Bodner is the record owner of claims 41Q 30108595 and 41Q 30108596.

2. Claims 41Q 30108595 and 41Q 30108596 were decreed with DNRC issue remarks:

41Q 30108595:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41Q DECREE ISSUED 05/27/2010.
FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
THE CLAIMS LISTED FOLLOWING THIS STATEMENT MAY BE A MULTIPLE USE OF THE SAME RIGHT. THESE CLAIMS MAY NEED A MULTIPLE USE REMARK. 41Q 30108595, 41Q 30108596.
THE POINT OF DIVERSION CLAIMED DIFFERS FROM WHAT WAS CLAIMED IN 41Q 30024442, WHICH THIS CLAIM IS REPLACING.
THE PLACE OF USE CLAIMED DIFFERS FROM WHAT WAS CLAIMED IN 41Q 30024442, WHICH THIS CLAIM IS REPLACING.
THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE MAY BE QUESTIONABLE. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE WAS NOT SUBMITTED WITH THIS CLAIM.
DNRC EXAMINATION WAS UNABLE TO CONFIRM THE USE OF THIS WATER RIGHT FOR THE TEN CONSECUTIVE YEARS PRIOR TO JULY 1, 1973.
VOLUME MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

41Q 30108596:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41Q DECREE ISSUED 05/27/2010.
THE FLOW RATE CLAIMED MAY BE QUESTIONABLE. GW3 FILING IN THE CLAIM FILE INDICATES A FLOW RATE OF 7GPM.
THE CLAIMS LISTED FOLLOWING THIS STATEMENT MAY BE A MULTIPLE USE OF THE SAME RIGHT. THESE CLAIMS MAY NEED A MULTIPLE USE REMARK. 41Q 30108595, 41Q 30108596.
THE POINT OF DIVERSION CLAIMED DIFFERS FROM 41Q 30024442, WHICH THIS CLAIM IS REPLACING.
THE PLACE OF USE CLAIMED DIFFERS FROM 41Q 30024442, WHICH THIS CLAIM IS REPLACING.
THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE MAY BE QUESTIONABLE. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE WAS NOT SUBMITTED WITH THIS CLAIM.

3. Joseph C. Bodner was ordered to meet with the DNRC to address the unresolved issue remarks on both claims 41Q 30108595 and 41Q 30108596. (Doc.¹1.00).

4. On June 20, 2023, DNRC Water Resource Specialist Brandon Ahlgren filed a Memorandum stating he was not contacted by the Claimant. (Doc. 2.00). Mr. Ahlgren indicated that he reviewed the scanned claim filed, aerial photographs, and Montana Cadastral to prepare the Memorandum.

Mr. Ahlgren indicated that it appears appropriate to add a multiple use information remark to claims 41Q 30108595 and 41Q 30108596.

Mr. Ahlgren confirmed the points of diversion and places of use should remain as decreed and the issue remarks questioning the points of diversion and places of use should be removed from claims 41Q 30108595 and 41Q 30108596.

¹ “Doc.” numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

Mr. Ahlgren recommended the flow rate for claim 41Q 30108596 be reduced from 10.00 gallons per minute (gpm) to 7.00 gallons per minute.

Mr. Ahlgren indicated the remaining issue remarks decreed on claims 41Q 30108595 and 41Q 30108596 were decreed on the claims in error and should be removed from the claims.

5. An Order was issued setting a deadline to determine if Claimant Joseph C. Bodner agreed or disagreed with Mr. Ahlgren's recommendations. The Order indicated that if nothing were filed by the July 21, 2023 deadline, this Water Master would conclude Joseph C. Bodner agrees the multiple use remark should be added to claims 30108595 and 41Q 30108596 and the flow rate for claim 41Q 30108596 should be reduced to 7.00 gpm.

6. Nothing was filed by the deadline.

CONCLUSIONS OF LAW

1. The Water Court must address all issue remarks decreed on a claim. Sections 85-2-247, and 85-2-248, MCA.

2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

3. Pursuant to Rule 22, W.R.Adj.R., if a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing or fails to comply with an order issued by the Water Court, the Water Court may issue such orders of sanction with regard thereto as are just.

4. The issue remark indicating claims 41Q 30108595 and 41Q 30108596 were not included in the 2010 decree is a notice-type remark. As no objections were filed, the remark can be removed from both claims.

RECOMMENDATIONS

1. The flow rate for claim 41Q 30108596 should be reduced to 7.00 gpm.
2. A multiple use remark should be added to claims 41Q 30108595 and 41Q 30108596.

A Post Decree Abstract of Water Right Claim is served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via USPS Mail:

Joseph C. Bodner
3480 Otter Creek Rd
Raynesford, MT 59469-9607

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, FROM SUN TO MARIAS RIVERS
BASIN 41Q

Water Right Number: 41Q 30108595 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: JOSEPH C BODNER
3480 OTTER CREEK RD
RAYNESFORD, MT 59469 9607

Priority Date: OCTOBER 10, 1892

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 7.00 GPM

Volume: 1.50 AC-FT

Households: 1

Source Name: SPRING, UNNAMED TRIBUTARY OF BIG OTTER CREEK

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWNWNW	31	16N	9E	JUDITH BASIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DEVELOPED SPRING

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NWNWNW	31	16N	9E	JUDITH BASIN

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

30108595

30108596

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, FROM SUN TO MARIAS RIVERS
BASIN 41Q

Water Right Number: 41Q 30108596 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: JOSEPH C BODNER
3480 OTTER CREEK RD
RAYNESFORD, MT 59469 9607

Priority Date: OCTOBER 10, 1892

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: 7.00 GPM

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: SPRING, UNNAMED TRIBUTARY OF BIG OTTER CREEK

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWNWNW	31	16N	9E	JUDITH BASIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DEVELOPED SPRING

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SESWSW	30	16N	9E	JUDITH BASIN
2			SESWSW	30	16N	9E	JUDITH BASIN

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

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